

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL
RECEIVED

NOV 22 1996

In the Matter of)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Advanced Television Systems)
and Their Impact upon the)
Existing Television Broadcast)
Service)

MM Docket No. 87-268

DOCKET FILE COPY ORIGINAL

COMMENTS OF RED RIVER BROADCASTING CORPORATION

Red River Broadcasting Corporation (Red River), by its attorneys, submits these Comments on the Commission's Sixth Further Notice of Proposed Rule Making ("Notice") in this proceeding (FCC 96-317, released August 14, 1996).

I. SUMMARY

Advanced television is a long-term goal which mandates long-range, forward-thinking rules and policies. While the Notice focuses on incumbent stations, it does not look ahead to address the need to protect the efforts of broadcasters to construct new stations or modify their existing stations to bring new or improved service to the public. Fostering new video service has been a fundamental policy objective of this Commission for many years. The proposed rules, however, do not adequately take that policy into account. A desire to "freeze" the industry to accommodate the new ATV allotments -- allotments which will not be put to use for many years -- cannot lawfully override the cardinal objective of encouraging the continued growth and expansion of television service.

Red River thus requests that the Commission protect uncontested, pending applications for new NTSC stations from DTV interference, list such applications in its revised DTV Table of Allotments, and conditionally assign a "paired" DTV channel to them. Red River further requests that the Commission accommodate pending NTSC modification applications filed prior to the Notice in formulating the final DTV Table of Allotments. These actions will further the public interest by facilitating the entry of new stations thereby increasing the number of broadcast "voices," and promoting improved service by existing stations.

II. BACKGROUND

Red River is an established broadcaster operating five television stations in North Dakota, South Dakota and Western Minnesota. Red River has had an application pending for a new NTSC station for Sioux Falls, South Dakota for almost two years. On December 27, 1994, Red River filed an application for a construction permit for NTSC Channel 36 allocated to Sioux Falls. (BPCT-941227KI.) A competing application for Channel 36 was later filed. To avoid the delay and cost of a comparative hearing and expedite new service to Sioux Falls, Red River petitioned the Commission to allot Channel 46 to Sioux Falls so that it could amend its application to specify proposed operation on that channel. The petition was granted by the Commission¹ and on May 10, 1996, Red River filed a

¹ Report and Order, MM Docket No. 945-136, released January 26, 1996. (granting petition and giving Red River right to amend without being subject to competing applications.)

minor amendment proposing operation on Channel 46. Its application is uncontested, but is still pending. On December 27, 1994, Red River also filed an application to relocate the facilities of Station KDLT, Channel 5, Mitchell, South Dakota. (BPCT-941227KH.) This application is uncontested and remains pending as well.

Red River's NTSC application for Channel 46 is not listed in the Notice's draft DTV Table of Allotments nor is it protected from harmful DTV interference. The draft DTV table assigns DTV Channel 46 to NTSC Channel 4 in Sioux City, Iowa, which is less than 80 miles from Sioux Falls, South Dakota. This DTV assignment would not meet the minimum co-channel DTV to NTSC spacing requirements proposed by the Notice and would thereby preclude concurrent operation of both stations. Notice at ¶98. Red River thus requests that the Commission recognize and protect its interest as a NTSC applicant.

III. UNCONTESTED NTSC APPLICATIONS FOR NEW STATIONS SHOULD BE PROTECTED FROM DTV INTERFERENCE AND LISTED IN THE DTV TABLE OF ALLOTMENTS.

The Notice provides only a brief discussion of the status of NTSC applicants, like Red River, that had applications pending at the time the Notice was released. The Commission states that it anticipates that "applications for new NTSC TV stations on existing allotments will not have a significant negative impact on the development of the DTV Table of Allotments." Notice at ¶60 (emphasis added). Given this finding, all pending NTSC applications should be

included in the proposed table; there is no reason not to. Yet the Notice fails to do so. In fact, Red River's channel is not only omitted from the table, but another nearby station is tentatively assigned the same DTV channel.

If the Commission intends to include Red River's Channel 46 in the final Table of Allotments, Red River asks that this change be made. The Notice, however, does not discuss how pending applications for new NTSC stations will be incorporated into the revised DTV Table of Allotments. Red River is concerned that the Notice may not have listed NTSC applications because no licenses for these stations have issued. If that is the case, Red River strongly objects. The Commission should instead protect all NTSC allotments with pending uncontested applications from DTV interference and list these applications in the Table of Allotments. Failure to do so would be short-sighted and would undermine long-standing Commission policies promoting development of new broadcast service to the public.

First, given that uncontested NTSC applications are likely to be granted, failing to account for them now in the DTV table will only create problems down the road. It is, as a technical matter, far easier to adjust allotments at this point, when the table is in flux and flexible solutions to conflicts can be considered, than to attempt to shoehorn in a channel once the table is adopted. If the Commission does not account for pending applications now, it will inevitably face problems later when it is forced to resolve conflicts between new and existing stations. This will impose substantial burdens on the Commission's already scarce resources.

Immediate inclusion will facilitate reassignment of interfering DTV channels and greatly reduce future conflicts between NTSC permittees and incumbent stations.

Second, the clear public interest is for more NTSC stations to be constructed -- particularly in the rural areas that many pending applications propose to serve. The Commission has repeatedly stressed the importance of promoting new, competing media voices which can increase the diversity of programming available to the American public. Uncontested pending applications represent precisely the new voices that the Commission has sought to foster. Failing to make room for those new voices in the table would flatly contradict those often-recited policies, and frustrate the entry of new television stations into video markets. Given that the Notice (at ¶60) has already recognized that including them will "not have a significant negative impact" on completing the table, there is no countervailing consideration.

The Commission should thus identify each current NTSC channel for which an uncontested construction permit application is pending with a "place holder" in the DTV table, even though most pending NTSC applications are not immediately eligible for a DTV channel assignment. The draft Table of Allotments included with the Notice does not list pending NTSC applications and there is no way to tell if an application was considered by the Commission when formulating the DTV table. The draft MSTV DTV Table, on the other hand, contains a "place holder" for new NTSC applications that were included in its study. This method of identifying pending NTSC applications should be adopted by the Commission.

It will give applicants notice that their application was considered in creating the DTV allotments, inform incumbent stations of potential conflicts with DTV channel assignments, and serve the public interest by facilitating initiation of new television broadcast service.

IV. THE COMMISSION SHOULD ADOPT POLICIES THAT FAVOR GRANT OF UNCONTESTED NTSC APPLICATIONS FOR NEW STATIONS.

While the Notice proposes to reserve the right to deny or modify pending NTSC applications, it does not discuss the factors to be considered in making that determination. Specifically, the Commission does not identify the interference criteria it will use to review new NTSC applications. Red River believes that the Commission should adopt policies that strongly favor the grant of uncontested NTSC applications pending when the Notice was issued. Such applications should be subject to modification or denial only when accommodation is not technically possible by, for example, modifying the DTV channels for existing stations.

Grant of uncontested NTSC applications is in the public interest and should be encouraged by the Commission. Because they can be granted quickly, they will not needlessly tie up DTV channels or delay the implementation of DTV itself. Grant of new NTSC station applications also promotes the Commission's long standing policy of fostering competition in the broadcast market. Implementation of DTV should not thwart this goal. And, given that many uncontested NTSC applicants for new stations already on file would serve smaller under-served

markets, they will bring needed program diversity to areas with limited programming options.

V. DTV CHANNELS SHOULD BE CONDITIONALLY ASSIGNED TO UNCONTESTED NTSC APPLICATIONS FOR NEW STATIONS.

The 1996 Telecommunications Act precludes the Commission from awarding DTV licenses to applicants for new NTSC channels in the initial allotment phase.² The Commission's proposed cut-off rules further limit the assignment of a DTV channels to existing stations and the few permittees and applicants that met the 1991 cut-off date. Neither the 1996 Act nor the proposed cut-off rules, however, preclude the Commission from allotting a conditional DTV channel to be "paired" with the channel involved in a pending NTSC application. The conditional allotment would become permanent only after the NTSC application is granted. This would be consistent with the 1996 Act, while placing new NTSC stations on a par with incumbent stations and thereby promote new, competitive voices.

The same reasons set forth above that warrant inclusion of uncontested pending NTSC applications in the Table of Allotments also warrant identifying a "paired" DTV channel for them. Since uncontested applications are likely to be granted, there little reason to postpone the allotment. Early assignment will give the Commission maximum flexibility in designing an efficient allotment scheme for all stations. If uncontested NTSC applicants are not considered until after the

² See Section 201 of the Telecommunications Act of 1996, 47 U.S.C. 336(a)(1).

initial assignment, interference situations may arise that unnecessarily prevent the assignment of a DTV channel. If an applicant is unable to count on having a DTV allotment available once it is licensed on the NTSC channel, it may be hindered from proceeding with construction of the NTSC facility, in part because the permittee's ability to obtain financing may depend on the availability of a paired DTV channel. If the NTSC station is eventually not constructed, the Commission can then simply delete the conditional DTV allotment from the table.

Given long-standing policy to promote the growth of new stations, the final DTV rules should further, not contradict that policy. A conditional DTV allotment for pending uncontested new station applications should thus be included in the final table.

VI. NTSC MODIFICATION APPLICATIONS PENDING PRIOR TO THE NOTICE BE SHOULD PROTECTED IN THE DTV TABLE.

The Notice states that the Commission "will henceforth condition the grant of applications for modifications of technical facilities, including those for applications on file before the date of the adoption of this Further Notice but granted after that date, on the outcome of our final decision on the DTV Table of Allotments." Notice at ¶63. Failure to protect previously-filed uncontested NTSC modification applications in formulating the final DTV Table of Allotments would be contrary to the public interest.

Red River's modification application to relocate its Mitchell station, for example, has been pending for nearly two years. The proposed Table of

Allotments, however, does not reference the proposed new site. Failure to consider its modification application in formulating the final DTV table may unnecessarily prevent the relocation of its transmitter, by arbitrarily allocating an interfering DTV channel. There is no good reason not to accommodate existing applications when it is technically feasible to do so.

The proposed policy unwisely favors future DTV service over existing NTSC service. As the Commission itself acknowledges in the Notice, "NTSC operations will continue to be important for some time" and "an approach that is more neutral in protecting both existing NTSC stations and new DTV allotments would be appropriate and would better serve the interests of broadcasters and the public." Id. at ¶9. A policy that fails to protect Red River's two year old NTSC application does not strike a reasonable balance between current NTSC service and future DTV service and therefore should not be followed. Instead, the final table should reference and incorporate modification applications filed prior to the Notice, so that broadcasters can improve their service to the public.

VII. CONCLUSION

To promote initiation of new television service, Red River recommends that the Commission include the channels of pending uncontested NTSC applications in the revised DTV Table of Allotments, protect these channels from DTV interference, and award a conditional paired DTV channel. Further, the Commission should promote improved NTSC service by protecting previously-filed NTSC modification applications.

Respectfully submitted,

RED RIVER BROADCASTING CORPORATION

By: John T. Scott, III
John T. Scott, III
David D. McCurdy
CROWELL & MORING LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 624-2500

Its Attorneys

Dated: November 22, 1996